

REMARKS

Claims 43, 78, 84, 86 and 87 are pending in this application. In the Office Action dated March 26, 2004, the Examiner rejected claims 43, 78, 84, 86 and 87 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,599,678 to Wertheimer et al. ("Wertheimer") in view of U.S. Patent No. 6,350,706 B1 to Howard ("Howard").

As a preliminary matter, applicant would like to remind the Examiner that, to date, the Form PTO-1449's from the Supplemental Information Disclosure Statements filed September 26, 2003, and January 20, 2004, have not been returned. The Examiner is respectfully requested to initial and sign the PTO-1449's and to return them to the undersigned attorney.

The rejection of claims under 35 U.S.C. 103(a) that rely on Howard must be withdrawn because Howard, which as will be explained in more detail below, cannot be relied upon as a reference in supporting a rejection under 35 U.S.C. 103(a), in view of 35 U.S.C. 103(c). 35 U.S.C. 103(c) states:

“(c) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under [section 103] where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.”

Howard was filed on September 3, 1998, prior to the filing of the present application (filed on August 31, 2000), and was granted on February 26, 2002, subsequent to the filing of the present application. Therefore, Howard is a reference under 35 U.S.C. 102(e)(2).

With respect to common ownership, both Howard and the present application were, at the time the invention was made, owned by, or subject to an obligation of assignment to, Micron Technology, Inc. Assignment of Howard is shown on the cover page of the patent, and assignment of the present application is recorded at Reel/Frame number 9611/0494 on November 25, 1998.

Therefore, under 35 U.S.C. 103(c), a rejection of the claims under 35 U.S.C. 103(a) that relies, in part, on Howard cannot be maintained, and consequently, must be withdrawn.

All of the claims remaining in the application are now clearly allowable. Favorable consideration and a timely Notice of Allowance are earnestly solicited.

Respectfully submitted,

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